

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548**

FILE: B-196652

DATE: March 22, 1983

MATTER OF: Jose Lujan, et al.

DIGEST:

Action of Claims Group, AFMD, denying claims for retroactive temporary promotions and backpay of 18 National Guard technicians on basis of Wilson v. United States, Ct. Cl. No 324-81C, Order, October 23, 1981, and Turner-Caldwell III, 61 Comp. Gen. 408 (1982) is sustained. Previous decision of Comptroller General in Matter of Lujan, B-196652, January 11, 1980, only removed technical barrier which precluded consideration of these claims on the merits. It did not constitute a settlement of the claims.

By a letter of September 21, 1982, James M. Peirce, President, National Federation of Federal Employees, appealed Settlement Certificates issued on August 25, 1982, by Claims Group, AFMD, to the following 18 individuals:

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|-----------------------------|---------------------------|
| Jose Lujan Z-2493547 | Andrew Morris Z-2493401 |
| William Compton Z-2800439 | Steve Vigil Z-2800438 |
| Eloy Olona Z-2800441 | Carl Pontecorvi Z-2800442 |
| Herman Lucero Z-2800443 | Charles Olona Z-2493493 |
| Eloy Duran Z-2800488 | Joseph White Z-2800448 |
| Terrill Kawcak Z-2493498 | Richard Gwozdz Z-2800440 |
| Virgilio Lopez Z-2493414 | Kent Clark Z-2800445 |
| Lawrence Martinez Z-2493533 | Joseph Sanchez Z-2800446 |
| Albert Baldonado Z-2493476 | Kenneth Smart Z-2800447 |

The settlements denied the claims of the above-named individuals for retroactive temporary promotions and backpay in light of the decision of the United States Court of Claims in Wilson v. United States, Ct. Cl. No. 324-81C, Order, October 23, 1981, and the Comptroller General's holding in Turner-Caldwell III, 61 Comp. Gen. 408 (1982). The denial of the claims of the 18 named individuals by the Claims Group on August 25, 1982, is sustained, since the Wilson and Turner-Caldwell III

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decisions preclude payment of all pending and future claims for retroactive temporary promotions and backpay based on the rationale of the earlier Turner-Caldwell decisions, 55 Comp. Gen. 539 (1975) and 56 Comp. Gen. 427 (1977).

In the appeal Mr. Peirce contended that the Wilson and Turner-Caldwell III decisions should not preclude favorable settlement of these claims because of his analysis of the Comptroller General's decision in Matter of Lujan, et al., B-196652, January 11, 1980. He argues that it was determined that these individuals were eligible for backpay under the rationale of the Turner-Caldwell decisions, and hence the claims were not pending but settled except for the administrative task of determining the specific amount due each individual.

However, the Lujan decision held only that Mr. Lujan, and 17 other National Guard technicians, were entitled to have their claims independently evaluated and adjudicated under nondiscretionary agency regulations found in the National Guard Bureau's Technical Personnel Manual. Previously the claims had been disallowed on the basis that the positions of the technicians were neither in the competitive service nor the General Schedule. The Lujan decision specifically stated that it was not a "decision on the actual settlement of any claim." In other words it merely removed a technical barrier which had precluded consideration of the claims on the merits. The claims were returned to the National Guard Bureau for adjudication on the merits, and the National Guard Bureau denied the claims on the merits. The claims were then appealed to Claims Group on June 8, 1982, resulting in the settlements of August 25, 1982.

Since the claims had not been settled and were pending at the time of the Wilson and Turner-Caldwell III decisions, those decisions precluding payment of the claims were

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applicable. Accordingly, the action of the Claims Group in denying the claims is sustained.

for *Shilton J. Acolan*
Comptroller General
of the United States